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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 708

ANGLO CHINESE SHIPPING COMPANY, LTD.,

Petitioner,

—against—

THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY BRIEF

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The Government's arguments in opposition to the petition for a writ of certiorari overlook the fact that its motion to dismiss the petition filed in the Court of Claims was made before it filed its answer and was based on the petition filed in that Court and various Governmental publications relating to the participation of the United States in the occupation of Japan.

No affidavits, documents or other information were submitted by the United States to contest or dispute the allegations of the petition filed in the Court of Claims.

For the purpose of the Government's motion to dismiss, therefore, the allegations of the petition are to be deemed admitted.

Russian Volunteer Fleet v. *United States*, 282 U. S. 481.

The petition in the Court of Claims in substance alleges that the United States, acting by and through the Supreme Commander for Allied Powers and the United States Armed Forces, notwithstanding its advices that the petitioner's vessel was reported as looted property and was available for return to the petitioner, directed the Japanese Government to retain the petitioner's vessel subject to the direction of the Supreme Commander for Allied Powers and the United States Armed Forces, for the purpose of laying and repairing submarine cables, as directed and approved by the Supreme Commander and the United States Armed Forces, and thereby deprived the petitioner of the use of its vessel.

The brief submitted by the United States in opposition to the petition for a writ of certiorari apparently does not dispute that there was a taking or "requisition" of petitioner's vessel (see pages 12 to 14 of the Government's brief), but contends that the taking or requisitioning was by and for the benefit of the Japanese Government, relying in part on statements contained in the Court of Claims opinion.

But it is respectfully submitted that there was no basis for the Court of Claims findings, or the Government's contentions based thereon, that the Japanese Government requisitioned petitioner's vessel or that the Japanese Government derived a benefit from the use of the vessel.

It is respectfully submitted that nowhere in the record, either before the Court of Claims or this Court, can there be found any facts to support the following statements in the opinion of the Court of

Claims (Appendix p. 26) upon which the Government relies (Brief in opposition pp. 12-14) as to the use and benefit of the petitioner's vessel:

> "The laying and repairing of these cables was for the benefit of Japan."

or the statement

> "The cables were not for temporary use by the Allied Powers only during their occupation; they were for long time use extending far beyond the period of occupation"

or the statement

> "* * * the occuying powers got an incidental benefit from the use of them during their occupation * * *"

With respect to the contention of the Government on pages 14 and 15 of its brief, that the Japanese Goverment requisitioned the vessel, the directive requiring the Japanese Government to report looted property explicitly provided:

> "The Imperial Japanese Government is directed to retain all such properties under custody and will not permit any transactions or movement of such property."
>
> (See copy of Supreme Commander's memorandum directive dated April 19, 1946 attached to certified transcript of record.)

It is respectfully submitted that being required to report all looted property and prohibited from permitting any transactions or movement of such property, the Japanese Government only had custody of

petitioner's vessel and could not requisition such property for its own benefit.

The only authority directing or controlling such looted property was the Supreme Commander for the Allied Powers and the United States Armed Forces. (See Appendix 13, *Occupation of Japan—Policy and Progress*—State Department Publication 2671—Far Eastern Series 17, pp. 73-81; Appendices 27 and 28, *Activities of the Far Eastern Commission*, Report of Secretary General, Department of State Publication, 2888, pp. 80-83.) As pointed out in the petition for a writ of certiorari (Petition, p. 15), such direction and control, together with actual retention of the vessel, was possession of petitioner's vessel by the occupation forces.

It is respectfully submitted that the Court of Claims was in error in dismissing the petition filed in this case in its Court and that the petition for a writ of certiorari to that Court should be granted.

HENRY J. BOGATKO,
Counsel for Petitioner.